

**Supporting Statement for  
Royalty-in-Kind Pilot Program — Offers, Financial Statements, and  
Surety Instruments for Sales of Royalty Oil and Gas  
(OMB Control Number 1010-0129)  
(Expiration Date: June 30, 2003)**

**A. Justification**

**1. What circumstances make the collection of information necessary?**

The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary.

Taking and selling of the Government's royalty share in the form of production or "in kind" (RIK) is authorized by the Mineral Leasing Act (MLA), 30 U.S.C. 192, for onshore leases and the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1353, for offshore leases (Attachment 1). Recommendations in an MMS 1997 Feasibility Study concluded that, under the right conditions, RIK could be workable, revenue-positive, and administratively more efficient for Government and industry. Pursuant to the 1997 study's recommendations, MMS is conducting the following pilots.

- For oil from Federal leases in Wyoming which began October 1, 1998;
- For gas from Federal leases offshore the State of Texas [Texas 8(g)] which began December 1, 1998;
- For gas from Federal offshore leases in the Gulf of Mexico (GOM) Region which began in October 1999. This involves the largest production volumes; and
- For oil from Federal offshore leases in the GOM Region which began in October 2000.

In addition to the above pilots, on November 6, 2001, President Bush announced an initiative to refill the Strategic Petroleum Reserve (SPR). MMS, in coordination with the Department of Energy (DOE), entered into a joint, 3-year initiative to fill the remaining capacity of the SPR. Operators of Federal leases in the GOM will deliver royalty oil to MMS' exchange partner at or near the lease. MMS's exchange partner will then deliver similar quantities of crude oil to MMS or its designated agent at Gulf Coast market centers. MMS's designated agent will be either DOE or its exchange contractor. DOE will then contract for exchange or direct movement of exchange oil to the SPR.

The feasibility and cost-effectiveness of MMS providing RIK production direct to other Federal agencies for their consumption is also being investigated in conjunction with the pilots.

MMS, as the responsible steward of Federal mineral revenues, is conducting the pilot programs of oil and gas RIK sales and investigation of direct Federal consumption to show conclusively whether or not RIK is viable for the Federal Government, and, if so, how, when, and where it makes sense to exercise the RIK option.

#### Offers, Financial Statements, and Surety Instruments for Sales of Royalty Oil and Gas

The collections of information addressed in this information collection request (ICR) are necessary because the Secretary of the Interior is obligated to hold competition when selling to the public to protect actual RIK production before, during, and after any sale, and obtain a fair return on royalty production sold. MMS must fulfill those obligations for the Secretary. The reporting requirements are as follows:

- a. The actual offers that potential purchasers will submit when MMS offers production for competitive sale;
- b. Offerors' statements of financial qualification; and
- c. Surety Instruments, such as a Letter of Credit (LOC), Bond, prepayment, or Parent Guaranty.

MMS has also re-evaluated the need for two reporting requirements that were approved by OMB in the last ICR submission and has determined that this information is no longer needed. Those items were (1) Form MMS-4440, Summary of Receipt and Delivery Volumes and (2) Report of Gas Analysis (RGA). Also, the subject heading "LOC" has been changed to the more generic heading "Surety Instruments" to capture the broader field of financial instruments that may be collected under this ICR, such as Bonds, prepayments, and Parent Guarantees. That is, an LOC is just one of many types of surety instruments used by MMS that provide a safeguard against non-payment by a respondent under an RIK contract.

#### **2. How, by whom, and for what purpose will the information be used?**

**a. Offers.** MMS will evaluate offers which competing potential purchasers may choose to submit in response to a variety of types of offerings in all four pilots. The format for offers will be specified in the offering and may vary among offerings. MMS may offer royalty oil and gas production by Invitation for Offers (IFOs). The latter will be open only to offerors who have previously established their qualifications. MMS will evaluate all offers to determine which combination of price and other terms comprises the best return to the Federal Treasury and to any affected State.

**b. Financial statements or other related qualification information.** MMS may request that a bidder submit its publicly available statement of its financial condition (brought briefly up-to-date, if needed) or other related qualification information. MMS evaluates the qualification information to determine whether it is highly probable that a bidder will reliably

follow through on payment of the dollar amount (or delivery of exchange production) offered as its bid and will also timely perform activities attendant to the taking of oil and/or gas. This is done to reduce the risk to the Government in these transactions.

**c. Surety Instruments.** In cases of high-risk counterparties, MMS will require a surety instrument to guaranty performance under an RIK sales or exchange agreement. Surety instruments are commonly used in the commercial oil and gas world as a standard course of business where risk is encountered from counterparties. No specific format is required for LOC's, prepayments, or Parent Guarantees; however MMS requires a specific format for Bonds (See OMB Control Number 1010-0135 for more information regarding LOC's and Bonds). The minimal information an LOC must contain is specified as follows: (1) bank letterhead; (2) effective date; (3) amount of surety instrument; (4) name of contractor; (5) contract number; (6) bank ABA number; (7) expiration date of the LOC, and (8) a standard set of conditions that must be met to collect on the LOC. Prepayments require no format or additional information. A Parent Guaranty must specify that the Guarantor (parent company) will guaranty prompt payment and performance by the counterparty under the contract, otherwise the Guarantor may be requested by the Beneficiary (MMS) to provide payment on behalf of the counterparty. Parent Guarantees specify a dollar amount of the guaranty and the effective term. MMS receives approximately 3 Bonds, less than 5 LOC's, 1 to 2 prepayments, and 10 Parent Guarantees annually or, in some cases, semiannually. We are revising this ICR to include this increase in reporting.

### **3. Does the collection of information involve the use of information technology, does it reduce the burden, and to what extent?**

**a. Offers.** The bid itself is part of a formal competitive process, which, in its entirety, is safeguarded by MMS contracting officers. Offers are submitted by telefax, e-mail, electronic trading systems, or tape-recorded telephone conversations to expedite review. However, to assure demonstrable integrity of the process, such offers, if awarded, must be confirmed by submitting a signed hard copy thereafter.

**b. Financial statements or other related qualification information.** The financial statement may be initially submitted by telefax, e-mail, or regular mail. However, MMS has acquired a service to obtain financial statements electronically through the Internet, which will reduce the reporting requirement commensurately.

**c. Surety Instruments.** Use of electronic technology is not appropriate for Surety Instruments. To be legally binding, a surety instrument must be submitted to MMS in hard copy with original signatures.

**4. Is the information duplicated by any other Federal agency, and can similar information be used or modified for this collection?**

**a. Offers.** This information is not duplicated by any other Federal agency. Similar information cannot be modified for this purpose. Only offerors (or their authorized agents) can submit their bid. It must be uniquely generated and submitted under MMS's controlled and impartial competitive process.

**b. Financial statements or other related qualification information.** This information is not duplicated by any other Federal agency. Offerors and potential offerors must have the opportunity to submit current, updated financial information, which is known only to them.

**c. Surety Instruments.** Surety instruments such as LOC's and Parent Guarantees may be standardized forms that possibly could be used by other Federal agencies, State agencies, universities, and commercial institutions. By its nature, a surety instrument must be submitted by the respondent, not another Federal agency.

**5. What is the agency doing to minimize the burden on small businesses or other small entities?**

**a. Offers.** The burden of submitting a bid is minimal, and MMS has streamlined it as much as possible for the benefit of businesses of all sizes. Offerors are provided a list of offered properties and relevant information about location and pipeline connections. They need only enter the price they are offering on the list and return it with a signature page to MMS. Most oil and gas from private sources is now marketed under similar competitive processes. Any business MMS would find qualified to bid and purchase MMS's oil and gas production would already be researching the market to establish their offering price and would have no trouble meeting the minimal burden of submitting a competitive bid.

**b. Financial statements or other related qualification information.** Companies of all sizes routinely maintain and seek the requested information in the normal course of business. Therefore, submitting the information to MMS will not place undue burden on small businesses. In certain cases, MMS will accept alternative financial information in lieu of company financial statements. This is particularly the case for very small private companies that do not wish to release sensitive financial information to the Federal Government. For small refiners, this requirement is covered in OMB Control Number 1010-0135.

**c. Surety Instruments.** For small refiners, this requirement is covered in OMB Control Number 1010-0135. Small refiners requested that MMS accept an LOC to protect the Government against loss in lieu of relying solely on the small business' financial statement as a predictor of performance. They did so in the belief that some small businesses might not qualify for RIK contracts if MMS evaluated them solely on their financial statements. Furthermore, MMS has recently instituted a credit-risk management program whereby small businesses, as well as other companies, can qualify for an approved line of unsecured credit. While it may not

reduce the number of surety instruments collected under this ICR, the line of credit serves to reduce the dollar value of the surety (i.e., secured credit) that would be required to participate in the RIK program.

**6. What are the consequences to the Federal program or policy activity if the information is not collected or is collected less frequently; and are there any technical or legal obstacles to reducing the burden?**

**a. Offers.** The MLA (30 U.S.C.192) and the OCSLA (43 U.S.C. 1353) require public competition for sale of RIK. To demonstrate competition, MMS must collect offers addressing relevant economic factors in writing from potential purchasers of Federal royalty oil or gas. MMS is utilizing different bid structures and frequencies in different types of offerings and may discover some are less burdensome than others, while still meeting legal criteria. For instance, MMS may offer contracts with lasting up to one year or offer RIK at the lease in return for other production delivered by the bidder to another location or require performance of a service as part of the purchase. Such offers would be submitted less frequently and be more complex to present. If this information was not submitted, MMS could not meet the legal requirement to compare competitive offers (prices) for RIK. MMS could not sell its Federal royalty production, and the public could not buy the Federal royalty production.

**b. Financial statements or other related qualification information.** Royalty oil and gas are public assets, which must be protected. The successful bidder is contracting to provide an offered sales price and /or required service in return for receipt of the Government's RIK production. The interests of the public in actually receiving the price and/or service are best protected by the provision of information, prior to a bid being awarded, about the offerors' qualifications to perform. This permits MMS to avoid selling to a bidder who is a poor risk. The bidder must be given the opportunity to submit their own information. The consequences to the public of MMS awarding a contract and delivering royalty production to a financially unqualified bidder is that they may fail to perform services (such as arranging to take the gas) and fail to pay for royalty oil or gas taken. This would result in MMS incurring monetary penalties or storage fees for failure to take oil or gas from the pipeline company, administrative costs to pursue payment, and possibly loss to the public of the value of the royalty production, if the bidder becomes bankrupt. If the Government or the Government's lessee(s) must sell oil or gas on an emergency basis because it was not taken by the purchaser, they also would likely be unable to obtain full market value for the production and would incur additional administrative costs.

**c. Surety Instruments.** There are no technical or legal obstacles to reducing the collection burden for the RIK pilot programs. However, there would be considerable financial risk to the program and the taxpayers if surety instruments were not collected from risky counterparties.

**7. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2) requiring respondents to: (i) report more often than quarterly, (ii) prepare written responses in fewer than 30 days after receipt, (iii) submit more than an original and two copies of any document, or (iv) retain records for more than 3 years?**

**a. Offers.** The frequency of offers of availability for sale and length of contracts for Federal royalty oil and gas will vary, consistent with market practices and current conditions. Some offerings, on an exception basis, may be made on a monthly basis. Other offerings will be made twice a year (seasonally) or quarterly and for contract terms of 6 months or more.

**b. Financial statements or other related qualification information.** Financial statements are only required annually, but in certain cases may be voluntarily provided on a quarterly basis. For companies not pre-qualified in advance of the IFO, MMS may be required to request them on an immediate basis just prior to the deadline for submitting offers under the IFO. That is, companies must have their financial documentation on file with MMS before submitting an offer. There are no requirements in regard to (iii) and (iv).

**c. Surety Instruments.** Surety instruments are not required on a routine basis. They are only requested on an “as needed” basis when a respondent is awarded an RIK contract and before actual delivery of production commences.

**8. What efforts did the agency make to consult with the public and a representative sample of respondents?**

As required in 5 CFR 1320.8(d), MMS published a 60-day review and comment notice in the *Federal Register* on April 8, 2003 (68 FR 17075) (Attachment 2). We received no comments in response to this notice.

**9. Will payment or gifts be provided to respondents?**

No payments or gifts will be provided to respondents.

**10. What assurance of confidentiality is provided to respondents?**

Commercial or financial information submitted to MMS relative to minerals removed from Federal and Indian leases may be proprietary. Trade secrets, proprietary and other information are protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4)), and Department regulations (43 CFR 2). The Indian Minerals Development Act of 1982 (25 U.S.C. 2103) provides that all information related to any Indian minerals agreement covered by the Act in the possession of the Department shall be held as privileged proprietary information. Storage of proprietary information and access to it is controlled by strict security measures. MMS may also execute confidentiality agreements at the request of

respondents to provide additional assurance that their financial data remains confidential within the possession of MMS.

**11. Does the information collected include any questions of a sensitive nature?**

None of the information requested is considered sensitive.

**12. What is the estimated reporting and recordkeeping “hour” burden?**

**a. Offers.** We anticipate about 40 respondents will submit offers in each fiscal year (FY) across all four pilots and the SPR initiative. Some offerors will respond to only one offering each year, while other respondents will submit offers more often. MMS expects about 840 offers. The average time needed to prepare, submit, and create file copies of a bid is 1 hour. Therefore, the annual reporting and recordkeeping burden is estimated to be 840 hours. The annualized cost to respondents is estimated to be \$42,000 (840 burden hours x \$50 per hour).

**b. Financial statements or other related qualification information.** In each FY, no more than 20 respondents are requested to submit financial statements to MMS. These respondents are requested to submit financial statements generally because they are too small or because they are not publicly traded so as to be available from public sources, such as the Securities and Exchange Commission or the Internet. (MMS obtains financial statements through an internet-based service for about 40 oil and gas companies that are large or publicly traded on the New York Stock Exchange. These companies would not be considered respondents under this aspect of the ICR because we are not requesting financial information from these 40 companies. However, these companies may be considered respondents under other aspects of this ICR such as submitting offers and/or surety instruments.) It is a customary business practice to have a publicly available financial statement, so minimal burden hours are associated with creating the statement itself. The average time needed to review the instructions, prepare, update, submit, and create file copies of a financial statement is 1 hour per respondent. Therefore, the annual reporting and recordkeeping burden is estimated to be 20 hours. The annualized cost to respondents is estimated to be \$1,000 (20 burden hours x \$50 per hour).

**c. Surety Instruments.** MMS expects approximately 20 respondents to submit a surety instrument annually or semiannually. The estimated time to prepare, submit, and set up a file copy of any type of surety instrument is approximately 4 hours. Therefore, the annual reporting and recordkeeping burden is estimated to be 80 hours (20 responses x 4 hours = 80 hours). The annualized cost to respondents is estimated to be \$ 4,000 (80 burden hours x \$50 per hour).

### **Respondent Annual Burden Hour Chart**

<b>30 CFR Section</b>	<b>Reporting Requirements</b>	<b>Burden Hours per response</b>	<b>Annual Number of Responses</b>	<b>Annual Burden Hours</b>
	Offers	1	840	840
	Financial Statements	1	20	20
	Surety Instruments	4	20	80
<b>Total</b>			<b>880</b>	<b>940</b>

\*NOTE: A respondent is counted each time a different form is submitted. Unsuccessful offerors will submit only 2 responses.

#### **13. What is the estimated reporting and recordkeeping “non-hour” cost burden of the collection of this information, excluding any costs identified in Items 12 and 14?**

We have identified no reporting or recordkeeping “non-hour” cost burdens for this collection of information.

#### **14. What is the estimated annualized cost to the Federal Government?**

**a. Offers.** It is estimated that it will take the Government 1½ hours to analyze each bid. Therefore, evaluation of offers will cost the Government approximately \$63,000 (840 x 1½ hours each x \$50 per hour).

**b. Financial statements or other related qualification information.** It is estimated that the Government will review 60 of these statements annually, both those collected under this ICR and those retrieved through the Internet service. It is estimated that it will take the Government 5 hours to collect, analyze, document, summarize, and request follow-up information for each financial statement for a total hour burden of 300 hours. Therefore, evaluation of financial statements will cost the Government approximately \$15,000 (60 statements x 5 hours each x \$50 per hour).

**c. Surety Instruments.** It is estimated that it will take the Government 2 hours to request, follow-up, analyze, document, and file each surety instrument. Therefore, the handling of surety instruments will cost the Government approximately \$2,000 annually (20 Surety Instruments x 2 hours each x \$50 per hour).



**15. Is the agency requesting any program changes or adjustments reported in Items 13 or 14 of Form OMB 83-I?**

In Item 13 of Form OMB 83-I, the current OMB inventory is 1,324 burden hours. We are reducing (program change) the number of burden hours by 545 hours to reflect eliminating the requirements to submit Form MMS-4440 and the RGA ( $1,324 - 545 = 779$ ).

We are also increasing (adjusting) the burden hours by 161 hours for offers, financial statements, and surety instruments (from 779 hours to 940 hours) as a result of increased opportunities to bid which were created by MMS's planned offering of more RIK production volumes from additional pipeline systems and increased participation in the program through enhanced marketing efforts.

Therefore, the total annual hours requested are 940 hours with a reduction of 384 hours ( $1,324 - 940 = 384$ ). There are no changes to Item 14 of Form OMB 83-I.

**16. Are there plans for tabulation and publication of the results of the information collection?**

Overall results of the pilot will be reported to MMS management, interested State and industry organizations, and legislators. Proprietary data in individual submissions will be protected. No specific information is published regarding financial statements obtained or surety instruments obtained.

**17. Is the agency seeking approval not to display the expiration date?**

No. We will display the expiration date of OMB's approval on the IFOs.

**18. Is the agency requesting exceptions to the certification statement in Item 19 of Form OMB 83-I?**

To the extent the topics apply to this collection of this information, we are not requesting exceptions to the "Certification for Paperwork Reduction Act Submissions.

**B. Collection of Information Employing Statistical Methods**

This section is not applicable. We will not employ statistical methods in this information.